

REMARKS

Applicant respectfully submits this Amendment in response to the non-final Office Action mailed on January 21, 2010.

In the Office Action, the drawings were objected to under 37 CFR 1.83(a), as failing to show the “lug” recited in claim 8; claim 5 was rejected under 35 U.S.C. § 112 as allegedly being indefinite; claims 1-4 and 6-8 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over McNary (U.S. Patent No. 5,899,200) in view of Dehaven (U.S. Patent No. 6,003,205); and claim 5 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over McNary and Dehaven in view of Pollet (U.S. Publication No. 2004/0089292).

By this Amendment, Applicant has amended the drawings, specification, and claim 5. After entry of this Amendment, claims 1-8 remain pending. Of those, claim 1 is the only independent claim.

Applicant respectfully traverses the rejections and submits that the proposed claims are in condition for allowance, for at least the reasons set forth below.

Objection to the Drawings

The drawings stand objected to under 37 CFR 1.83(a), as failing to show the “lug” recited in claim 8.

The lug recited in claim 8 is depicted in both originally-filed Figure 3 and the originally-filed specification. By this Amendment, Applicant has amended Figure 3 to include a reference numeral “11” to better identify the originally-depicted lug. Applicant notes that the lug was depicted in the drawings and described in the specification and

claims in the originally-filed application. Accordingly, no new matter has been added by the inclusion of a reference numeral in Figure 3.

Applicant respectfully submits that the drawings do show every feature of the claims, as required under 37 CFR 1.121(d), and requests that the objection to the drawings be withdrawn.

Rejection of Claim 5 Under § 112

Claim 5 stands rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter of Applicant's invention. Specifically, the Examiner has indicated that "the contours" lacks proper antecedent basis, and that it is unclear whether Applicant is using the word "thereof" to refer to the strap or the body.

By this Amendment, Applicant has amended claim 5 to recite that, "said body has a base having contours, and said strap underlies said body and substantially follows the contours of the base." Applicant notes that such an arrangement is depicted in the originally-filed drawings and described on page 5, lines 13-14 of Applicant's originally-filed specification. Accordingly, no new matter has been added by the amendment of claim 5.

Accordingly, Applicant respectfully submits that claim 5 satisfies the requirements of 35 U.S.C. § 112, and requests that this rejection be withdrawn.

Rejection of Claims 1-8 Under § 103(a)

Claims 1-4 and 6-8 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over McNary in view of Dehaven. Applicant respectfully disagrees.

The Office Action asserts that McNary discloses all of the elements of claim 1 except, “that the cap can slide on the strap.” (Office Action, page 4.) The Office Action asserts that Dehaven teaches, “a cap 22 that slides on a strap 16,” and asserts that, “it would have been obvious to...modify McNary’s cap and strap with a cap that slides on a strap, as taught by Dehaven, for the purpose of providing a more basic strap that doesn’t need to be folded.” (Office Action, page 4.) Again, Applicant respectfully disagrees.

First, even if McNary were modified by the teachings of Dehaven in the way suggested by the Examiner, any resulting combination would still not disclose each limitation of claim 1. It is true that the slide tab 25 on bottom cap 20 can be inserted through the keyhole slot 29 of the bottle handle strap 16, in order to link the top bottle cap 12 to the bottom bottle cap 20. (Col. 4, ll. 17-19.) However, claim 1 recites “a cap which can be placed in a position to substantially occlude said mouthpiece.” Dehaven does not disclose a cap that can be placed in a position to substantially occlude the mouthpiece. In fact, neither of Dehaven’s caps 12 or 20 is configured to occlude a mouthpiece, because the top cap of Dehaven “has an opening...adapted for extending a top spout of a bottle received by the top cavity.” (Abstract) Accordingly, any proper combination of McNary and Dehaven fails to disclose “a cap which can be placed in a position to substantially occlude said mouthpiece,” as recited in claim 1.

Second, claim 1 recites that the cap is “arranged to slide on said strap such that said cap must translate away from said mouthpiece prior to the pivoting of said strap.” Dehaven, however, does not disclose a cap arranged to slide on the strap such that the cap must translate away from the mouthpiece prior to pivoting of the strap. Rather,

Dehaven merely discloses that insertion of slide tab 25 into keyhole slot 19 links the top and bottom caps 12, 20 so that a bottle received by the caps can be held between the caps by handle strap 16. (Col. 5, ll. 1-6.) Dehaven suggests that the keyhole slot 19 is only engaged with and slidable on slide tab 25 once caps 12, 20 are positioned on a bottle, to adjust a space formed between the handle strap 16 and a side of the bottle 11. (Col. 5, ll. 7-17.) In other words, Dehaven does not even suggest sliding the slide tab 25 in keyhole slot 19 for the purpose of translating a cap away from a mouthpiece or other opening. From Figures 1 and 2 of Dehaven, it is not even clear that either of the caps 12, 20 could be removed from the bottle without first disengaging strap 16 from the slide tab 25. Accordingly, any proper combination of McNary and Dehaven also fails to disclose a cap “arranged to slide on said strap such that said cap must translate away from said mouthpiece prior to the pivoting of said strap,” as recited in claim 1.

In sum, even if the strap 16 and caps 12, 20 of Dehaven were combined with the inhaler of McNary (which Applicant does not believe would be obvious), such a combination would not disclose each and every element of independent claim 1. Rather, the combination of McNary and Dehaven would only result in an inhaler having a mouthpiece cap 9 attached by strap 19 (of McNary), as well as a carrying strap 16 connected between two opposing caps 12, 20 (of Dehaven), neither of which is configured to “occlude said mouthpiece,” or “slide on said strap such that said cap must translate away from said mouthpiece prior to the pivoting of said strap,” as recited in independent claim 1. Accordingly, the combination of McNary and Dehaven fails to teach or suggest each and every element of independent claim 1, as required under

35 U.S.C. § 103(a). Applicant thus respectfully requests that the rejection be withdrawn.

Claims 2-4 and 6-8 depend from independent claim 1 and are therefore allowable over McNary and Dehaven at least due to their dependence from independent claim 1, and for their additional recitations of patentable subject matter.

Regarding claim 5, the Examiner cites Pollet as disclosing “a strap that underlies the body and substantially follows the contours thereof.” (Office Action, page 5.) However, claim 5 depends from claim 1 and Pollet fails to cure the deficiencies of McNary and Dehaven as discussed in relation to claim 1 above. Accordingly, claim 5 is allowable over McNary, Dehaven, and Pollet, at least due to its dependence from independent claim 1, and for its additional recitations of patentable subject matter.

Accordingly, Applicant respectfully requests that all of the rejections of claims 1-8 be withdrawn, and that the claims be allowed.

Conclusion

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Should it be necessary to resolve any additional concerns and expedite the issuance of a Notice of Allowance, the Examiner is invited to contact Applicant's undersigned representative at (202) 408-4000.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

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Dated: April 21, 2010

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Attachment: One (1) Replacement Sheet (Figures 3 and 4)